

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**BAKERCORP**

§

**Plaintiff,**

§

**v.**

§

Case No. 4:16-CV-136

**ABENGOA BIOENERGY CO.**

§

**Defendant.**

§

§

**ORIGINAL COMPLAINT**

NOW COMES BakerCorp (“BakerCorp”), by and through its counsel of record, and in support of its Complaint against Abengoa Bioenergy Co. (“Abengoa”) states:

**Parties**

1. BakerCorp is a corporation organized under the laws of Delaware. Its corporate office is located in Plano, Texas, from which its high level officers direct, control and coordinate the corporation’s activities.

2. Abengoa is a corporation organized under the laws of Kansas. Its corporate office is located at 16150 Main Circle Drive, Suite 300, Chesterfield, Missouri. Missouri is the location from which its high level officers direct, control, and coordinate the corporation’s activities. Abengoa’s registered agent for service of process in the State of Missouri is: CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105.

**Jurisdiction and Venue**

3. This Court has jurisdiction over this action by virtue of 18 U.S.C. § 1332, as the parties are citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

4. The venue is proper in this Court pursuant to 28 USC 1331(b)(1) and (c)(2) by virtue of the facts that Abengoa resides in this judicial district; BakerCorp's cause of action is brought to collect sums due under a contract with Abengoa; and payments made under the contract originated from Abengoa's corporate office in Missouri.

**Factual Allegations**

5. On or about January 2015, BakerCorp began to lease to Abengoa certain industrial equipment, including a 1.7 million gallon tank, float lid, and other equipment necessary to use the tank for its intended purpose. BakerCorp began invoicing Abengoa for the agreed-upon monthly cost of renting this equipment on or about February 2015.

6. On April 16, 2015, BakerCorp and Abengoa memorialized the existing oral lease agreement by entering into a written Rental Agreement (attached hereto as Exhibit A) whereby BakerCorp agreed to lease to Abengoa the 1.7 million gallon tank at a rate of \$4,900 a week (or \$19,600 every 28 days) and the float lid at the rate of \$4,375 a week (or \$17,500 every 28 days).

7. Under the Rental Agreement, Abengoa was required to and, in fact did, rent additional accessories, attachments, cables, or other equipment necessary to use the tank. *See* Rental Agreement TERMS AND CONDITIONS § 2.

8. The failure to make a required rental payment within 30 days of an invoice requiring payment of the same is an event of default under the Rental Agreement.

9. In the event of a default, Section 19 of the TERMS AND CONDITIONS of the Rental Agreement permits BakerCorp to, among other things, accelerate payment and "declare any amounts owed immediately due and payable and [to] commence legal action" to recover the amounts owed.

10. Under the Rental Agreement, Abengoa is required to pay all reasonable costs of collection, court costs, attorneys' fees, and other expenses incurred by BakerCorp and related to

collection of “any charges due under this Agreement or in connection with the enforcement of its terms or otherwise in connection with this Agreement or the Equipment whether or not litigation is commenced.” BakerCorp has retained the undersigned attorneys to commence this action to recover all sums due under the Rental Agreement.

11. As of the date of this *Complaint*, Abengoa is in default with respect to unpaid invoices totaling \$1,928,737.56. In addition, BakerCorp has incurred additional costs and expenses of \$51,791.35 in connection with repossessing the equipment leased to Abengoa.

**Cause of Action  
(Breach of Contract)**

12. BakerCorp incorporates the allegations in paragraphs 1 through 11 as if set forth in full.

13. BakerCorp has performed its obligations under the Rental Agreement.

14. Abengoa has breached the Rental Agreement.

15. As a result of the breach, BakerCorp has incurred actual damages.

16. As a result of the breach, BakerCorp has incurred, and will incur, attorney’s fees.

**Prayer**

Based on the foregoing and such other evidence as may be adduced at any trial of this matter, BakerCorp requests that judgment be rendered in its favor and against Abengoa:

- (a) for its actual damages;
- (b) for pre-judgment and post-judgment interest on any amounts awarded, as provided by law;
- (c) for an award of its reasonable and necessary attorneys’ fees;
- (d) and, for such further and other relief to which it may be justly entitled.

Respectfully submitted,

By: /s/ Mark S. Fredman

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